IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 337 OF 2006
IN
NOTICE OF MOTION NO. 1442 OF 2005
IN
SUMMARY SUIT NO. 2696 OF 1996

Dev Anand .... Appellant

Versus

Satprakash Sharma .... Respondent

Mr. Ajay K.J.Panicker for the appellant.
Mr. R.R. Sharma for the respondent.

CORAM: **KSHITIJ R. VYAS, C.J.** &
ABHAY S. OKA, J.
DATE: JULY 10, 2006.

P.C.

The appellant in this appeal has challenged the *ex parte* decree dated 17th November, 1997, passed in Summary Suit No. 2696 of 1996.

2. It is the case of the appellant that he came to know about the present proceedings only on 15th February, 2005, when he was served with a court notice of execution. The appellant has tried to explain the delay of about eight years on the ground that his erstwhile lawyer Mr. D. Gama appointed by him, without informing him about the proceedings of the Court, migrated to Australia, keeping the appellant

in dark about the court proceedings. It is the contention of the appellant that he has already cleared the dues of the respondent and, therefore, nothing is required to be paid by him to the respondent.

3. Having heard the learned counsel appearing for the appellant, we are, *prima facie*, of the opinion that the appellant is required to be given a chance to pursue his case on the ground of negligence of his erstwhile lawyer. Not informing the appellant about the court proceedings by his erstwhile lawyer, while migrating to Australia, is, in our opinion, sufficient reason for non-appearance of the appellant at the time of passing the ex-parte decree.

4. In this view of the matter, we set aside the order dated 17th November,1997 passed in Summary Suit No. 2696 of 1996. The appellant is granted leave to defend the suit on condition that the appellant deposits Rs. 75,000/- in this Court within a period of six weeks. It is made clear that on failure to deposit the said amount, the decree passed by the trial Court shall stand. On such amount being deposited, the same shall be invested by the Registrar (O.S.)/ Prothonotary and Senior Master of this Court in the fixed deposit of any Nationalised Bank, initially for a period of two years and thereafter to

be renewed from time to time.

5. The appeal is partly allowed with costs quantified at Rs.5,000/- to be paid by the appellant to the respondent.

CHIEF JUSTICE

ABHAY S. OKA, J.